

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Criminal No. 05-cr-142-01-SM

Donald McMullin

O R D E R

Defendant moved for pretrial release on conditions, having previously stipulated to detention. A bail violation charge had previously been leveled and a warrant issued, but, apparently, neither was served. The parties thought the violation charge remained outstanding as of the January 31, 2007, hearing on defendant's motion to withdraw his guilty plea. The court dismissed that charge, if it was still pending, on staleness grounds.

Defendant's motion for release was denied. Although upon further consideration it does not appear that the Bail Reform Act's rebuttable presumption in favor of detention strictly applies here, see 18 U.S.C. § 3142(e), still, defendant at this point has pled and been adjudicated guilty of serious felonies – possession of firearms and ammunition while being an unlawful user of drugs, in violation of 18 U.S.C. § 992(q)(3).

A judicial officer "shall" order a person awaiting imposition of sentence detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released on bail. 18 U.S.C. § 3143(a).

Based upon the record, the proffers made, and argument by counsel, I cannot find, by clear and convincing evidence, that defendant does not pose a danger to the community. The record discloses that defendant was not only in possession of a substantial quantity of drugs, but also possessed numerous firearms. The superseding indictment also provides probable cause to believe that included among the firearms in defendant's possession was a machine gun. The investigation that eventually led to the charges in the indictment, as disclosed in the record, suggests, as well, that defendant's personality tends to be confrontative and anti-social. Drugs, multiple firearms, and a tendency toward confrontation are a bad mix, posing a genuine danger to the safety of others and the community at large. In any event, nothing in the record persuades me, by clear and convincing evidence, that defendant would not pose a danger to the safety of others or the community if released.

Pursuant to the provisions of 18 U.S.C. § 3143(a), defendant shall remain detained pending sentencing. Should defendant's motion to withdraw his pleas of guilty be granted he may, of course, file another motion for release pending trial to be resolved under a different standard.

SO ORDERED.



Steven J. McAuliffe
Chief Judge

February 2, 2007

cc: Debra M. Walsh, Esq.
William E. Christie, Esq.
U.S. Probation
U.S. Marshal